

**DURHAM, NORTH CAROLINA  
MONDAY, MAY 17, 2004  
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Absent: None.

Also present: City Manager Marcia Conner, City Attorney Henry Blinder, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation and the Pledge of Allegiance led by Council Member Clement.

The Mayor read proclamations declaring May 16-22, 2004 as National Public Works Week and May 17, 2004 as the 50<sup>th</sup> Anniversary of Brown vs. Board of Education.

Mayor Pro Tempore Cole-McFadden announced she attended the following events: What a Good Parent Is Contest [recognized one of the winners Carrie Murphy]; Careers & Hospitality Initiative; Cotillion at Hillside High School and the Over 90 Celebration sponsored by the Coordinating Council for Senior Citizens.

Council Member Clement noted he participated in the planning meeting for Bethesda Park, the C M Herndon Park groundbreaking along with other members of Council and the 50<sup>th</sup> Anniversary of the Brown vs. Board of Education held at Durham School of the Arts.

Council Member Catotti requested that GBA #30 [Rezoning Case P04-05 S. Alston Avenue/Cypress Tree] be heard after the Consent Agenda.

Council Member Best commented on his attendance at the COP program and the Bull City Professional Firefighters Association picnic.

The Mayor asked for priority items from the City Manager, City Attorney and City Clerk. City Manager Conner requested that Consent Agenda #14 [Preliminary FY 2004-05 Budget] be moved to the front of the agenda and noted a copy of the preliminary official statement for Consent #18 [Resolution Providing for Issuance of \$10,000,000 Two-Thirds Bonds] is on file in the City Clerk's Office.

There were no priority items from the City Attorney.

Relative to GBA #30 [Rezoning Case P04-05 S. Alston Avenue/Cypress Tree], City Clerk Gray informed Council that the protest petition is no longer valid due to withdrawal of signatures by property owners.

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**MOTION** by Council Member Clement seconded by Council Member Catotti to accept the City Manager's priority items was approved at 7:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**[CONSENT AGENDA]**

**SUBJECT: PRELIMINARY FY 2004-05 BUDGET**

To receive a presentation on the City Manager's proposed Preliminary FY 2004-05 Budget.

City Manager Conner gave a power point presentation on the Preliminary FY 2004-05 budget totaling \$279.5 million. She highlighted the following: We have listened, budget priorities, overall budget, total proposed budget, an increase in property tax rate of 5 cents and other fee increases, total revenues, general fund spending by function, public safety as a top priority, new public safety equipment, preventive youth programs, economic development: revitalizing downtown, neighborhood issues, beautifying Durham--mandatory \$5 monthly fee for carts and bulky item pick up, 37 cents monthly increase in storm water, water & sewer system rate increase in consumption charge, maintaining good government; organizational efficiencies, city employees--salary adjustments, increasing health coverage, raising livable wage to \$9.51, funding for 31 non-city agencies, capital improvements & deferred maintenance, budget conclusions and deliberations [handout provided].

Kim Curtis noted Durham CAN supports an increase in property taxes to be earmarked for youth programs.

Lillie Lyons, of 506 Hope Avenue, submitted a petition from senior citizens requesting that all senior citizens 65 years and older ride DATA buses free.

Steve Hopkins, of 920-B Wadesboro Street, spoke in support of funding for the youth, community neighborhood associations and city employees.

Rev. Melvin Whitley, of 2614 Harvard Avenue, made comments in support of funding for downtown Durham, dirt streets and some type of recreation for East Durham.

**NOTE: COUNCIL ACTION WAS TAKEN LATER IN THE MEETING ON THIS ITEM.**

Mayor Bell asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. Consent Agenda Items 12 [Council Personnel Subcommittee]; 18 [Issuance of \$10,000,000 Two-Thirds Bonds]; 20 [River Forest Park Playground]; 24 [Fayetteville Street Sidewalk]; 25 [Erwin Road, Morreene Road and S. Roxboro Street

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Sidewalks]; 26 [Surplus Properties]; 29 [DATA Transit System Security Update]; 33 [Mallarme Chamber Players]; 35 [Stephen Hopkins]; 39 [Flynn Holding LLC & Innovations]; and 43 [Anita Keith-Foust] were pulled.

**MOTION** by Council Member Clement seconded by Council Member Stith to approve the Consent Agenda as amended was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**[CONSENT AGENDA]**

**SUBJECT: APPROVAL OF CITY COUNCIL MINUTES**

**MOTION** by Council Member Clement seconded by Council Member Stith to approve the City Council minutes for the April 5, 2004 regular City Council Meeting and the April 19, 2004 Regular and Special City Council Meetings; and

To approve City Council action taken at the April 8 and April 22, 2004 City Council Work Sessions was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: MUTI-JURISDICTIONAL ADVISORY BOARD - REAPPOINTMENT**

**MOTION** by Council Member Clement seconded by Council Member Stith to reappoint Anne M. Peele to the Multi-Jurisdictional Advisory Board for a community representative with a term to expire April 1, 2007 was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: DURHAM CITY-COUNTY APPEARANCE COMMISSION - APPOINTMENT**

**MOTION** by Council Member Clement seconded by Council Member Stith to appoint Fred D. White to fill one (1) vacancy on the Durham City-County Appearance Commission with a term to expire on April 1, 2007 was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: HUMAN RELATIONS COMMISSION - APPOINTMENT**

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**MOTION** by Council Member Clement seconded by Council Member Stith to appoint Aidil A. Polance-Ortiz to fill one (1) vacancy for an Other Racial Minority Member - Female with a term to expire on June 30, 2006 was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: DURHAM HISTORIC PRESERVATION COMMISSION – MAYOR’S NOMINEE FOR REAPPOINTMENT**

**MOTION** by Council Member Clement seconded by Council Member Stith to reappoint James A. Welch (Mayor's Appointee) to the Durham Historic Preservation Commission with a term to expire on September 1, 2005 was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: DURHAM OPEN SPACE & TRAILS COMMISSION – RECEIPT AND ACCEPTANCE OF AN APPLICATION**

**MOTION** by Council Member Clement seconded by Council Member Stith to receive and accept an application for a citizen to fill one (1) vacancy on the Durham Open Space & Trails Commission to represent Ward 1 with a term to expire June 30, 2004 was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: CONTRACTS**

**MOTION** by Council Member Clement seconded by Council Member Stith to authorize the City Manager to execute contracts on the list; and

To authorize the City Manager to make changes to contracts on the list before execution as long as the changes do not increase the dollar amount and remain consistent with the general intent of the contracts was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**Note: Weed and Seed Evaluation Contract was approved at the 5/6/04 Work Session with a vote of 6/0).**

Contractor	Contract Description	Dept	CT Amt
Johnny White and the Elite Band	Party in the Park performance	OEED	\$1,500.00

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Leslie Haskins	Softball Official	P&R	\$2,800.00
Michele Bongiorno	Ballet Lessons	P&R	\$2,000.00
Audrel McCauley	Drama Class	P&R	\$700.00
Mallarme Chamber Players	May Day Music Festival	P&R	\$3,000.00
William Britt	Umpire	P&R	\$1,200.00
Paul Conroy	Umpire	P&R	\$1,200.00
William Dorsey	Umpire	P&R	\$1,200.00
Vincent Horton	Umpire	P&R	\$1,200.00
Robert Mitchell	Umpire	P&R	\$1,200.00
Demetrius Williams	Umpire	P&R	\$2,400.00
Jacqueline Hargrove	Computer Instructor	P&R	\$1,000.00
Temika Smith	Computer Instructor	P&R	\$3,000.00
Carolyn Davis	Arts & Crafts	P&R	\$2,800.00
Johnny White and the Elite Band	Summer Music Festival	P&R	\$1,200.00
Nicole Oxendine	Ballet Lessons	P&R	\$1,500.00
Davie Martinez	Summer Music Festival	P&R	\$750.00
Michael Hale	Sound Technician	P&R	\$1,200.00
Staci Sharpe	Camp Instructor	P&R	\$500.00
Howard Partner	On Call Landscape Service	Gen Ser	\$1,475.00
Susan Denault	Water Exercise	P&R	\$700.00
Cornell Richards	Master of ceremonies for summer concerts	P&R	\$450.00
Walltown Children's Theater	Artistic Instruction for neighborhood recreation centers	P&R	\$26,600.00
C.H. Engineering	Fire Station 8	Gen Ser	\$1,000.00
James Murrell, Community Access Providers	Weed & Seed Evaluation	Housing	\$5,200.00

**SUBJECT: MAJOR SITE PLAN – SOUTHTRUST BANK - D04-076**

**MOTION** by Council Member Clement seconded by Council Member Stith to approve a major site plan for 'SouthTrust Bank', submitted by Chas H. Sells, Inc. on behalf of SouthTrust Bank, for a 3,897 square foot bank with 5 drive-through lanes and 24 parking spaces on a 0.864 acre site zoned SC (D) and F/J-B, located on the north side of NC Highway 54 and west of Fayetteville Road in the Southpoint Crossing Shopping Center, PIN 0718-02-86-4684, City Atlas Page 42, Block D-1 was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: MAJOR SITE PLAN – BEST WESTERN AT SOUTHPOINT - D04-008**

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**MOTION** by Council Member Clement seconded by Council Member Stith to approve a major site plan for “Best Western at Southpoint”, submitted by Wilson & Lysiak, Inc. on behalf of Mary Simpson, for a six-story hotel with 92 parking spaces on a 2.0 acre site zoned MU(D) and F/J-B, located on the east side of NC Hwy 751, west side of Leonardo Drive and north of Renaissance Parkway, PIN 0718-03-23-1383, City Atlas Page 49, Block A-4 was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: MAJOR SITE PLAN AND PRELIMINARY PLAT FOR CHELSEA MEADOWS SUBDIVISION - D04-032**

**MOTION** by Council Member Clement seconded by Council Member Stith to approve a major site plan and preliminary plat for “Chelsea Meadows Subdivision” submitted by The John R. McAdams Company, Inc. on behalf of Aegis Gibson, LLC, for 65 single-family residential lots on an approximately 21.11 acre site zoned PDR 3.07 and F/J-B, located on the south side of Massey Chapel Road and west of Fayetteville Road, PIN 0718-04-60-0760, 0718-04-60-2713, 0718-04-60-4714, 0718-04-60-8701, 0718-04-60-3367 and 0852-04-61-0414, City Atlas Page 49, Blocks C-3 was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: WATER EXTENSION AGREEMENT WITH RUCKER-HINING PROPERTIES, LLC - FAYETTEVILLE ROAD DAYCARE**

**MOTION** by Council Member Clement seconded by Council Member Stith to authorize the City Manager to enter into a water extension agreement with Rucker-Hining Properties, LLC to serve Fayetteville Road Daycare was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: BUDGET WORK SESSION SCHEDULE**

**MOTION** by Council Member Clement seconded by Council Member Stith to discuss the Budget Work Session Schedule was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: PRELIMINARY FY 2004-05 BUDGET**

**MOTION** by Council Member Clement seconded by Council Member Stith to receive a presentation on the City Manager's Proposed Preliminary FY 2004-05 Budget was

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approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: CONTRACT AMENDMENT FOR GROUNDWATER MONITORING SERVICES FOR THE SANITARY LANDFILL - WESTON SOLUTIONS, INC.**

**MOTION** by Council Member Clement seconded by Council Member Stith to authorize the City Manager to execute a contract amendment with Weston Solutions, Inc. for groundwater monitoring system services in an amount not to exceed \$50,000; and

To authorize the City Manager to execute future Supplemental Services authorizations over the next 5 years without further Council approval, provided the cost per year of such services does not exceed \$50,000; and

To authorize the City Manager to modify the contract amendment before execution provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by City Council was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: ANNUAL INSURANCE PLAN FOR FY 2005**

**MOTION** by Council Member Clement seconded by Council Member Stith to authorize the City Manager to maintain the general plan of insurance; and

To make additional purchases for special events and to meet lease and contract requirements as needed was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: BROKER SERVICES CONTRACT - MARSH USA, INC.**

**MOTION** by Council Member Clement seconded by Council Member Stith to authorize the City Manager to enter into contract with Marsh USA, Inc., for the purchase of insurance broker and risk management consulting services for a period up to three years effective July 1, 2004, at a total cost not to exceed \$130,000; and

To authorize the City Manager to modify the contract before execution provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by the City Council was

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approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: PROPOSED TEN-YEAR GROUND LEASE AGREEMENT FOR  
PARCEL #2 CT1635 - DURHAM ASSOCIATION OF REALTORS**

To approve the ten-year lease agreement with the Durham Association of Realtors and pursuant to G. S. 160A-272; and

To authorize the City Manager to modify the agreement before execution provided that modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement.

**MOTION** by Council Member Clement seconded by Council Member Stith to refer this item back to the administration was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: OPERATION BREAKTHROUGH CONTRACT EXTENSION –  
WEATHERIZATION IMPROVEMENTS**

**MOTION** by Council Member Clement seconded by Council Member Stith to authorize the City Manager to modify the contract with Operation Breakthrough, Inc. to extend the contract construction period from June 30, 2004 to September 30, 2004, and

To authorize the City Manager to modify the contract before execution provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by the City Council was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: MODIFICATION OF THE LOAN REPAYMENT TERMS FOR  
THE HOUSING AUTHORITY OF THE CITY OF DURHAM, D/B/A  
EDGEMONT ELMS LIMITED PARTNERSHIP (DEVELOPMENT  
VENTURES, INC., GENERAL PARTNER)**

To approve the 10-year extension of the loan repayment term, and the retention of the current monthly loan payment during the extension period for the Housing Authority of the City of Durham, Edgemont Elms Limited Partnership loan; and



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To authorize the City Manager to modify the contract before execution provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by the City Council.

**MOTION** by Council Member Clement seconded by Council Member Stith to refer this item to the May 20, 2004 City Council Work Session was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: WATER RESOURCES DIVISION OF THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES GRANT PROJECT ORDINANCE (ENO CAUSEWAY REMOVAL)**

**MOTION** by Council Member Clement seconded by Council Member Stith to accept the NCDENR Water Resources Division grant of \$50,000; and

To adopt the Grant Project Ordinance to make the funds available for removal of the cement causeway at the Eno River prior to the reimbursement by the State was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**Ordinance #12942**

**SUBJECT: HUMAN RESOURCES ORGANIZATIONAL ASSESSMENT**

**MOTION** by Council Member Clement seconded by Council Member Stith to receive a presentation on the Human Resources Organizational Assessment was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: SPEED HUMP SPECIFICATION FOLLOW-UP**

**MOTION** by Council Member Clement seconded by Council Member Stith to receive an update on the Speed Hump Specifications was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: JRUTH, INC. – JOHNETTA ALSTON**

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**MOTION** by Council Member Clement seconded by Council Member Stith to receive comments from Johnetta Alston requesting an expedited appeal to City Council to release the promised \$250,000 housing bond funds for JRUTH, Inc. to serve the Homeless, Transient and Ex-Offenders of this community was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: CHILD AND PARENT SUPPORT SERVICES (DBA: CENTER FOR CHILD & FAMILY HEALTH) – MATT EPSTEIN**

**MOTION** by Council Member Clement seconded by Council Member Stith to receive comments from Matt Epstein on the work of Child and Parent Support Services and the need to expand to include a Child Advocacy Center in Durham; and

To request funding by the City of Durham to fund the launch of a Child Advocacy Center was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: ALTIVIA CORPORATION**

**MOTION** by Council Member Clement seconded by Council Member Stith to receive comments from Robert Monsen and Bill Stratton on present reasons why the City Council should authorize the contract to be awarded to ALTIVIA Corporation for Bioxide requirement was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: RIGHT OF WAY TRACTOR MOWING AND LITTER AND DEBRIS REMOVAL CONTRACT - DIXIE LAWN SERVICE, INC.**

To authorize the City Manager to execute a contract with Dixie Lawn Service, Inc. for Contract M.04.1 Right of Way Tractor Mowing and Litter and Debris Removal in the amount of \$997,653.64; and

To authorize the City Manager to modify the contract provided the modifications do not increase the dollar amount of the contract and are consistent with the general intent of the version of the contract approved by the City Council.

**Note: This item was approved at the 5/6/04 Work Session with a vote of 6/0.**

**SUBJECT: DURHAM PLANNING COMMISSION**

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**MOTION** by Council Member Clement seconded by Council Member Stith to receive and accept applications for citizens to fill three (3) vacancies for District 1, District 5 and At-Large on the Durham Planning Commission--terms will expire on June 30, 2007 was approved at 8:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

At this time during the meeting, action was taken on GBA #30.

**SUBJECT: REZONING MATTER CASE P04-05 - S. ALSTON AVENUE/CYPRESS TREE - ED COOK ROAD, SOUTH OF RUSTICA DRIVE AND NORTH OF SO HI DRIVE - CYPRESS TREE DEVELOPERS, LLC**

To receive public comments on rezoning Case P04-05 (S. Alston Avenue/Cypress Tree)

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P04-05 out of RD and placing same in and establishing same as R-5(D).

Planning Department Recommendation: Approval

Zoning Committee Recommendation and Vote: Denial - (5-0)

Note: Invalid Protest petition due to withdrawal of signatures.

Dick Hails, Assistant Planning Director, briefed Council on the staff report commenting on the proposed use. He highlighted committed elements to include 151 lots, tot lot, dedication of right-of-way and traffic improvements. Also, he made comments on the plan amendment that was approved May 3, stated staff recommends approval and the Zoning Committee recommended denial.

Mayor Bell opened the public hearing.

### **Proponents**

Craigie Sanders, representing the applicant, spoke in support of this rezoning noting this proposal includes 4.2 units per acre and is consistent with the small area plan. He made comments on why Council should support this rezoning, the latest development, grading and the petition in support of this project. Further, he stated this development would place residential housing close to Research Triangle Park and indicated 60 individuals stood in support of this project.

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Edwin L. Sears, of 2638 S. Alston Avenue, spoke in support of this rezoning. He noted the development will have a positive impact in the area and urged Council to support this request.

Dorothy Hicks, of 1308 of Ed Cook Road, made comments in support of this rezoning. She noted project would enhance the community, be accessible to other facilities and major thoroughfares and benefit the city.

### **Opponents**

LaVonnia Allison, representing DCABP, spoke in opposition to this rezoning. She noted this development would be more intense than other developments in the area and expressed concern with school impacts.

Cindy Dixon, of 519 Olive Branch Road, presented a power point presentation in opposition to this rezoning highlighting density, the Zoning Committee's decision, small area plan, school, safety and response time for emergency personnel. She urged Council to not allow this neighborhood to become another Fayetteville Road and Southpoint area, to follow the small area plan for this area and make this zoning industrial and to vote no against this request.

Roger Coates, of 1530 Ed Cook Road, spoke in opposition to this rezoning request citing concerns with high density. He made comments about the developer, protest petition and urged Council to vote no to this rezoning request.

Carin Chestnut, of 1823 Leonard Drive, noted she has enjoyed living in this neighborhood and urged Council to vote no to the rezoning request.

Robin Purser, of 1514 Ed Cook Road, spoke in opposition to this rezoning expressing erosion, air quality and environmental issues. She urged Council to reject this rezoning.

Lenore Bailey, of Leonard Drive, urged Council to vote no to this rezoning because this is a quiet area.

### **Rebuttal**

Craigie Sanders, representing the applicant, addressed the plan amendment for the area, traffic and school impacts, infrastructure, air quality and withdrawal of names from the protest petition.

Mayor Bell declared the public hearing closed.

City Attorney Blinder briefed Council on the law pertaining to protest petition.

Dick Hails, Assistant Planning Director, asked the applicant if he was committing to lot-by-lot grading instead of mass grading on the project.

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Craigie Sanders, representing the applicant, replied yes.

Council Member Brown expressed density concerns.

Craigie Sanders, representing the applicant, noted the developer would commit to reducing the number of lots to 146/ 4.0 units per acre.

Council Member Catotti noted she couldn't support this rezoning because of concern with the land use designation, lot size, traffic/school impacts and the withdrawal of signatures.

Mayor Bell made comments on the homeowners association and maintenance of ponds. He noted he has a problem with supporting this rezoning because of the density and lot sizes.

Council Member Clement spoke in support of this rezoning noting this proposal will assist in bringing people who work in the Research Triangle Park closer to their jobs which will eliminate traffic congestion.

Dick Hails, Assistant Planning Director, noted two items have been offered by the applicant: a reduction in lots from 151 to 146 and lot by lot grading rather than mass grading.

The Mayor asked the applicant if staff is correct.

Craigie Sanders, representing the applicant, replied yes.

Discussion was held on open space.

Council Member Catotti asked the applicant if he would add open space as a committed element on the development plan instead of being proposed.

Ron Horvath, representing the applicant, noted the applicant would commit to the dedication of open space and tree preservation areas that are required represented on the plan.

**MOTION** by Council Member Clement seconded by Council Member Clement to receive public comments on rezoning Case P04-05 (S. Alston Avenue/Cypress Tree); and

To adopt an ordinance amending the Zoning Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in rezoning Case P04-05 out of RD and placing same in and establishing same as R-5(D) was approved at 9:04 p.m. by the following vote: Ayes: Council Members Best, Brown, Clement and Stith. Noes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Member Catotti. Absent: None.

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**[ITEMS PULLED FROM CONSENT AGENDA]**

**SUBJECT: COUNCIL PERSONNEL SUBCOMMITTEE**

To receive a report from the Council Personnel Subcommittee.

Council Member Stith noted he would like for staff to deal with the 5-cent tax/other fee increases requested by the City Manager rather than look at agencies and their memberships. Also, he made comments on the YMCA's definition on marriage and expressed a concern with taking a position on redefining the state law on marriage.

Mayor Bell noted he asked staff to look at how many other organizations had membership requirements receiving City funds.

**MOTION** by Council Member Stith seconded by Council Member Best to receive a report from the Council Personnel Subcommittee; and

To direct staff to address the tax/fee increases noted by the City Manager during her presentation on the proposed FY 04-05 budget; and

To support the existing state law definition on what a marriage is **FAILED** at 9:11 p.m. by the following vote: Ayes: Council Members Best, Clement and Stith. Noes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown and Catotti.

**SUBJECT: RESOLUTION PROVIDING FOR THE ISSUANCE OF \$10,000,000 TWO-THIRDS BONDS**

Council Member Stith expressed concern with this item due to the current budget situation and noted funds could be utilized for youth programs and additional police officers.

**MOTION** by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to adopt the resolution providing for the issuance of \$6,800,000 Street Improvement Bonds, \$1,200,000 Parks and Recreation Facilities Bonds, \$1,000,000 Municipal Building Bonds, \$500,000 Sanitary Sewer Bonds and \$500,000 Public Safety Communications Bonds was approved at 9:13 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, and Clement. Noes: Council Members Best and Stith. Absent: None.

**Resolution #9104**

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**SUBJECT: RIVER FOREST PARK PLAYGROUND AREA AND  
PLAYGROUND EQUIPMENT RENOVATION AND UPGRADE -  
L.A. DOWNEY & SON, INC.**

Steve Hopkins, of 920-B Wadesboro Street, made comments requesting upgrades for Sherwood Park.

**MOTION** by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to authorize the City Manager to enter into a contract with L.A. Downey & Son, Inc. in the amount of \$134,969; and

To modify the contract before execution provided that the modification does not increase the dollar amount of the contract and is consistent with the general intent of the contract approved by the City Council; and

To establish a contingency fund for the River Forest Project in the amount of \$16,197; and

To authorize the City Manager to negotiate and execute change orders on the River Forest project provided that the cost of all change orders does not exceed \$16,197 and the total project cost does not exceed \$151,166 was approved at 9:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: CONTRACT SW-14 FAYETTEVILLE STREET SIDEWALK  
(NCDOT E-4530) - WHITE OAK CONSTRUCTION  
CORPORATION**

**MOTION** by Council Member Best seconded by Council Member Catotti to authorize the City Manager to execute a contract with White Oak Construction Corporation for Contract SW-14 Fayetteville Street Sidewalk (NCDOT E-4530) in the amount of \$82,990; and

To establish a contingency fund for Contract SW-14 of \$12,510; and

To authorize the City Manager to negotiate change orders for Contract SW-14 provided that the cost of all change orders does not exceed \$12,510 and the total project cost does not exceed \$95,500 was approved at 9:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: CONTRACT SW-16 ERWIN ROAD, MORRENE ROAD, AND  
SOUTH ROXBORO STREET SIDEWALKS - HOLMES  
CONTRACTING, INCORPORATED**

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**MOTION** by Council Member Best seconded by Council Member Catotti to authorize the City Manager to execute a contract with Holmes Contracting, Incorporated for Contract SW-16 Erwin Road, Morreene Road and South Roxboro Street Sidewalks in the amount of \$635,019; and

To establish a contingency fund for Contract SW-16 of \$95,281; and

To authorize the City Manager to negotiate change orders for Contract SW-16 provided that the cost of all change orders does not exceed \$95,281 and the total project cost does not exceed \$730,300 was approved at 9:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: PLAN FOR THE SALE OF CITY-OWNED SURPLUS PROPERTIES**

Council Member Stith asked the administration to bring back a proposal that would allow Council to generate revenue from City owned property in relation to a master plan.

City Manager Conner noted this item will be discussed at the budget hearing during the Planning Department discussion.

Council Member Brown requested the administration to provide a listing of houses scheduled to be torn down at the Work Session.

To receive a presentation of the proposed plan for the sale of City-Owned surplus properties; and

To authorize the City Manager to execute demolition contracts on seven (7) structures identified as poor or to convey title to those properties to a non-profit for affordable housing on the condition that the structure shall be demolished with forty-five (45) days of option or sale.

***Note: This item was approved at the 5/6/04 Work Session with a vote 6/0.***

**SUBJECT: DATA (DURHAM AREA TRANSIT AUTHORITY) TRANSIT SYSTEM SECURITY UPDATE**

Chris Tiffany, of 611-F Lawson Street, made comments on the issue of separate but equal and expressed concern about profiling by police officers at DATA bus stops.

**MOTION** by Council Member Clement seconded by Council Member Stith to receive a report on security measures being implemented in the DATA Transit System was approved at 9:23 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore



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Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: MALLARME CHAMBER PLAYERS**

The following individuals spoke in support of funding for Mallarme Chamber Players: Susan Coon, Jimmy Gibbs and Anna Wilson.

City Manager Conner reported discussion on non-city agencies funding will be held May 24, 2004 during the budget deliberations.

**MOTION** by Council Member Catotti seconded by Council Member Stith to receive comments from Anna L. Wilson requesting inclusion in the FY 2005 Non-City Agency Grant Program was approved at 9:30 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: STEPHEN HOPKINS**

Steve Hopkins, of 920-B Wadesboro Street, made comments on this item and requested a meeting with NECD Subcommittee to discuss their budget request.

**MOTION** by Council Member Catotti seconded by Council Member Best to receive comments from Stephen Hopkins reporting the status of the NECD Action Team and Revitalization Plan; and

To request the City to look at the foreclosures in the County as it relates to Durham's Black Community and to see how many of the foreclosures are in the City's First Time Homebuyers Program was approved at 9:33 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: FLYNN HOLDING LLC & INNOVATIONS, INC.**

Steve Hopkins, of 920-B Wadesboro Street, expressed concern with the track record of the purchaser of Murdoch Place.

Anita Keith-Foust, of 323 W. Trinity Avenue, expressed concern with forgiveness of debt and the track record of person asking for debt to be forgiven.

**MOTION** by Council Member Clement seconded by Council Member Catotti to receive comments from Matthew Flynn on the current second position lien on the Murdoch Place and to purchase this property prior to foreclosure was approved at 9:38 p.m. by the

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following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: ANITA KEITH-FOUST**

Anita Keith-Foust, of 323 W. Trinity Park, expressed concern that no one plays in Old North Durham Park except for children who attend Central Park School. She noted actions need to be taken so that our public park can be opened for children to feel comfortable playing on the field and expressed concern with the gate being locked.

City Manager Conner made comments on the use agreement and noted an update will be given at the Work Session with a full report at the first meeting in June.

**MOTION** by Council Member Catotti seconded by Council Member Clement to receive comments from Anita Keith-Foust regarding concerns with the Central Park School for Children was approved at 9:43 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**[GENERAL BUSINESS AGENDA]**

**SUBJECT: CAFÉ FEED ME**

Tony Mendez urged Council to support this item.

Michael Laico addressed the liability issue commenting on the security and training for bartenders.

For clarification, Council Member Catotti asked why this item is coming before Council.

Michael Laico stated that they do have an ABC permit and noted the request is to ask for permission to serve alcohol outside of their doors.

City Attorney Blinder briefed Council on the requirements and noted the request is coming forward because the sales on the patio are on City property.

City Manager Conner asked that this item be referred to the May 20, 2004 City Council Work Session to review the request for long-term use on the patio.

**MOTION** by Council Member Clement seconded by Council Member Best to receive comments from Michael Laico requesting to serve alcohol on the patio on top of the parking garage at the Durham Center; and

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To refer this item to the May 20, 2004 Work Session was approved at 9:52 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**SUBJECT: 542 HOMELAND AVENUE – HOME PROGRAM FUNDING TO HEALING WITH CAARE, INC.**

To authorize the City Manager to approve \$80,000 HOME Program Funds to Healing with CAARE, Inc., as a 0% interest loan with a term of 15 years for acquisition and rehabilitation of 542 Homeland Avenue; and

To authorize the City Manager to execute an Acquisition/Rehabilitation Loan Agreement and other related loan documents with Healing with CAARE, Inc. that are consistent with this agenda item; and

To authorize the City Manager to modify the agreement before execution provided that modifications do not increase the dollar amount of the agreement and the modifications are consistent with the general intent of the existing version of the agreement.

City Manager Conner asked Council to approve motions outlined in staff's memorandum.

LaVonnia Allison asked for clarification on the criteria for zero percent interest loans.

Anthony Humphries, of Housing & Community Development, noted the criteria is based on the Home Investment Program regulations.

Council Member Brown expressed concern with zero percent interest rate.

**MOTION** by Council Member Clement seconded by Council Member Stith to authorize the City Manager to approve \$80,000 HOME Program Funds to Healing with CAARE, Inc., as a forgivable loan with a term of fifteen years at zero percent interest for acquisition and rehabilitation of 542 Homeland Avenue; and

To authorize the City Manager to execute an Acquisition/Rehabilitation Loan Agreement and other related loan documents with Healing with CAARE, Inc.; and

To authorize the City Manager to make changes to the loan documents so long as they do not increase the loan amount, lessen the contractor's duties, or extend the term of the contract beyond twelve months from the loan agreement's execution date was approved at 10:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

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**MOTION** by Council Member Best seconded by Council Member Catotti to extend the meeting beyond 10:00 p.m. was approved at 10:01 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**[GENERAL BUSINESS AGENDA - PUBLIC HEARINGS]**

**SUBJECT: TEXT AMENDMENT – COMMON SIGNAGE PLANS IN THE MIXED USE AND DOWNTOWN DESIGN OVERLAY DISTRICTS (TC 04-01)**

To receive public comments on Zoning Text Amendment TC 04-01 (Common Signage Plans in the Mixed Use and Downtown Design Overlay Districts), and

To adopt an ordinance amending the Zoning Ordinance to incorporate the changes proposed by TC 04-01.

Planning Department Recommendation – Approval  
Zoning Committee Recommendation and Vote: Approval – 6-0

Dick Hails, Assistant Planning Director, briefed Council on the staff report.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor declared the public hearing closed.

**MOTION** by Council Member Clement seconded by Council Member Stith to receive public comments on Zoning Text Amendment TC 04-01 (Common Signage Plans in the Mixed Use and Downtown Design Overlay Districts), and

To adopt an ordinance amending the Zoning Ordinance to amend standards for common signage plans in the mixed use and downtown design overlay districts was approved at 10:12 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**Ordinance #12943**

**SUBJECT: MAJOR SPECIAL USE PERMIT - VERIZON UTILITY BUILDING ADDITION- M04-01**

To hold a quasi-judicial public hearing to consider a Major Special Use Permit for the construction of an addition to an existing utility facility in the R-10; F/J-B District, and

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To direct the Planning Director to prepare an order for adoption, for 1) approval, 2) approval with conditions or 3) denial, or to continue the hearing to a specified later meeting.

City Clerk D. Ann Gray swore in the following individuals: Dick Hails, Michael Stock, Ron Horvath and Otto Wall.

Mayor Bell explained the proceedings for a major special use permit.

The Mayor asked Council to reveal any possible conflicts and to withdraw from this hearing if necessary. Also, Mayor Bell asked if any Council Member had been exposed to any evidence or information that may not come out at the hearing tonight.

Mayor Bell asked the attorney for the applicant and for opponents or a representative to identify themselves.

Ron Horvath identified himself as representing the applicant.

Mayor Bell opened the public hearing.

### **Testimony from Staff**

Michael Stock, of the City/County Planning Department, requested that the staff report and all attachments and exhibits be entered as a part of the permanent record.

City Attorney Blinder asked if there were objections to the staff report.

The staff report was submitted as evidence since there were no objections.

Michael Stock, of the City/County Planning Department, noted RL Horvath Associates, Inc., on behalf of Verizon, Inc., proposes an addition to an existing utility building. He stated the 747 square foot addition will increase the building area from 234 to 981 square feet, and will be 18 feet (one story) high and the proposal meets parking requirements, and received a recommendation for approval from the Development Review Board on April 2, 2004.

Mr. Stock noted as a reminder, Council must make findings of fact under Section 13.2.3 of the Durham Zoning Ordinance, that the proposed use is: 1) In harmony with the area and not substantially injurious to the value of properties in the general vicinity; 2) In conformance with all special requirements applicable to the use and in conformance with the Supplementary Requirements Section of this Ordinance; 3) Will not adversely affect the health or safety of the public. He noted Council shall also give consideration to items 1-10 under section 13.2.4 as indicated in the staff report. Additionally, Council may impose conditions on the permit request that the Council deems necessary to ensure that this project is compatible and in harmony with the surrounding neighborhood and staff will provide a recommendation to the Council at the conclusion of testimony for this case.

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The Mayor asked if there were questions for staff. There were no questions.

**Testimony from Applicant**

Ron Horvath, representing the applicant, made comments on the findings of facts. He noted the building in its use will not adversely impact the surrounding property owners, there is no increase in noise, site will meet ADA standards, commented on the buffer and noted there will be no outdoor storage, building access and parking areas will be fenced and urged Council to support this request.

The Mayor asked if there were questions for the applicant. There were no questions.

No one spoke in opposition to this major special use permit.

**Staff Recommendation**

Michael Stock, of the City/County Planning Department, noted staff recommends approval subject to the following condition: the project shall be completed in accordance with the approved site plan, including any additional corrections and verifications. As a correction, Mr. Stock added Section 7.30 with the other sections as meeting the requirements.

Mayor Bell declared the public hearing closed.

**MOTION** by Council Member Clement seconded by Council Member Brown to adopt an order granting , upon certain conditions, a Major Special Use Permit for the Verizon Utility Building Addition (Case M040-1) as amended was approved at 10:21 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Best, Brown, Catotti, Clement and Stith. Noes: None. Absent: None.

**Ordinance #12941**

There being no further business to come before the City Council, the meeting was adjourned at 10:21 p.m.

Linda E. Bratcher  
Deputy City Clerk

D. Ann Gray, CMC  
City Clerk

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